

INSURANCE

Mike Johanns
Governor

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Director

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Sales of Business or Investment Opportunities Involve Legal Obligations for the Agent

The Nebraska Department of Banking and Finance has received numerous complaints and has begun several investigations involving the sale of business opportunities. These sales and ownership programs often include vending racks, video machines, public payphones, and ATMs, as well as work-at-home promotions. The sale of any business or investment opportunity, separate from an agent's normal line of insurance products, may involve specific legal obligations for the respective agent to ensure compliance with Nebraska law. An agent selling the above programs in violation of Nebraska law may incur administrative sanctions as well as civil penalties, felony criminal penalties, and the repayment of full investment plus interest to clients.

The Department is also aware of significant activity in connection with the sale of investments in viatical settlement contracts. Contrary to claims by some companies offering these investments, viatical settlement contracts fall within the definition of "security" under Nebraska law.

Any insurance agent who is approached to market an investment product should first contact the Department of Banking and Finance at 402-471-2171 to confirm appropriate compliance with the Securities Act of Nebraska.

Finally, agents should contact the Department of Insurance at 402-471-2201 to determine compliance with applicable insurance regulations.

LIFE AND HEALTH DIVISION

New Actuary/Administrator Named

Jeanne Meeker Daharsh, a Fellow of the Society of Actuaries, joined the Department on April 19 as the new Actuary/Administrator of the Life and Health Division.

Jeanne Meeker Daharsh joined the Department on April 19. Jeanne, a Fellow of the Society of Actuaries, is the new Actuary/Administrator for the Life and Health Division following the retirement of Ron Elmshauser. Jeanne comes to the Department with twenty-two years of experience in the insurance industry. For the past ten years, Jeanne was with Central States Health and Life Company of Omaha working in the product development and valuation areas on life and single premium credit insurance. Prior to that, Jeanne was employed with Guarantee Mutual (now Jefferson Pilot) working in the annuity and life insurance product development area.

LEGAL DIVISION

Service Contract Reimbursement Policies and Risk Retention Groups

If a dealer or administrator issues or sells a motor vehicle service contract in Nebraska, that service contract must be backed by a motor vehicle service contract reimbursement policy.

Under Nebraska law, if a dealer or administrator issues or sells a motor vehicle service contract in Nebraska, that service contract must be backed by a motor vehicle service contract reimbursement policy. The reimbursement policy must be issued by an authorized insurer or risk retention group and must provide coverage of all payments made under the service contract from the first dollar of coverage. That is, the dealer or administrator cannot keep any of the financial risk under the service contract.

The dealer or administrator must be removed from any and all financial obligations and liabilities on service contracts.

To fulfill the legal requirements of Nebraska's Motor Vehicle Service Contract Reimbursement Insurance Act, a company issuing a motor vehicle service contract reimbursement policy is required to cover all obligations and liabilities incurred by the dealer or administrator under the terms of the service contract. That is, the dealer or administrator must be removed from any and all financial obligations and liabilities on service contracts. Any contingency, such as a requirement that the dealer or administrator first must fail to perform under the terms of the service contract or must exhaust their own reserves, would be in violation of the Act because it would require the dealer or administrator to retain a portion of the financial obligation on each service contract.

Reimbursement policies may be issued by authorized insurers and risk retention groups.

As mentioned previously, reimbursement policies may be issued by authorized insurers and risk retention groups. A risk retention group (RRG) is a company that is set up to provide liability insurance to its member-owners, all of whom must be similarly situated with regard to their liabilities. The basic assumption behind the Federal Liability Risk Retention Act of 1986 is that the member-owners of RRGs are sophisticated business persons who do not need the same protections as the general public. Thus, RRGs are subject to less regulation than insurance companies.

If you are a dealer or administrator who issues or sells motor vehicle service contracts and you are uncertain whether your reimbursement policy is in compliance with Nebraska law, you may want to obtain legal advice.

In contrast, an insurance company that holds a license to provide insurance in Nebraska may provide a number of different types of insurance, the insureds generally are not the owners of the company, and the insureds generally have more protection if there is a problem or issue with the company.

If you are a dealer or administrator who issues or sells motor vehicle service contracts and you are uncertain whether your reimbursement policy is in compliance with Nebraska law, you may want to obtain legal advice. If you are uncertain about whether a particular company or agent is licensed in this state, please check with the Nebraska Department of Insurance. A "Company and Agent Search," is provided through the Department's website, www.state.ne.us/home/NDOI/, under "General Information." You also may contact the Department at (402) 471-2201 / TDD (800) 833-7352, or at 941 "O" Street, Suite 400, Lincoln, NE 68508-3639.

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-1430 Coventry Health Care of Nebraska, Inc. (NE)	Violated <u>Neb.Rev.Stat.</u> §44-1540(3). Failed to adopt and implement reasonable standards for the prompt investigation and settlement of claims.	Consent Order \$2,000 admin. fine 2/28/04
C-1435 Cumberland Casualty and Surety Company (FL)	Company placed in rehabilitation by state of domicile.	Order Suspension of certificate of authority 3/26/04

Actions Taken Against Agents

CAUSE NO.	ALLEGATION	DISPOSITION
A-1525 Daryl Trawick Mobile, AL	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(b),(d) & (h). Violated any insurance law; improperly withheld money received from insurance business; demonstrated untrustworthiness.	Consent Order Agent's license suspended for six months 3/3/04
A-1527 Joseph Standeven Grand Island, NE	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(b),(g) & (h). Violated any insurance law; committed unfair trade practice; demonstrated untrustworthiness.	Consent Order \$1,000 admin. fine 2/13/04
A-1529 Sabrina Ann Winebrenner West Des Moines, IA	Violated <u>Neb.Rev.Stat.</u> §§44-1525(11) & 44-4059(1)(b). Failed to respond to the department within 15 business days; violated any insurance law.	Order Agent's license suspended until response is made to the department; \$3,000 admin. fine 3/11/04
A-1530 Victor B. Young Falls City, NE	Violated <u>Neb.Rev.Stat.</u> §44-4059(1)(b),(d) & (h). Violated any insurance law; improperly withheld money received from insurance business; demonstrated untrustworthiness.	Order Agent's license revoked 3/24/04

Insurance Legislation Signed

On April 13, 2004, Governor Johanns signed LB 1047 into law. LB 1047, introduced by the Banking, Commerce, and Insurance Committee, includes several miscellaneous provisions affecting Nebraska's insurance community.

As introduced, LB 1047 included relatively limited changes to the insurance code. These include clarification that the director need not wait sixty days after entry of supervision before seeking a rehabilitation or liquidation order. Individuals who are eligible for health tax credits under the Federal Trade Adjustment Assistance Program are now eligible for CHIP. Further, the bill adopts new NAIC standards on the minimum statutory interest rate guarantee for an individual fixed annuity contract. Significant amendments were made to LB 1047 on General File. The primary change allows a foreign mutual holding company and insurer subsidiary to transfer their domiciles to Nebraska. To allow a smooth transition for insurers redomesticating to Nebraska, LB 1047 will allow those insurers a mechanism to comply with the Insurers Investment Act.

Further, the legislation establishes that in a supervision, rehabilitation, or liquidation proceeding involving a reorganized stock insurer, the assets of an intermediate stock holding company are not assets of the reorganized stock insurer, thereby enhancing an intermediate stock holding company's ability to raise capital while continuing to protect policyholder interests. The legislation recognizes and codifies

two types of financial instruments that large life insurers offer to sophisticated investors, funding agreements, and synthetic guaranteed investment contracts. Nebraska lacked specific statutory provisions. These products are granted the status as policyholder claims in insurer liquidations, but not protection by the guaranty fund. LB 1047 is effective July 16, 2004.

LB 155 imposes strict liability on title insurers for the defalcations of their agents under LB 155. This requirement, together with a required disclosure that funds held by a title insurance agent as part of a so-called 1031 exchange are not regulated or guaranteed by the state, and granting of summary cease and desist authority in the director are imposed in lieu of the requirement for an annual audit by CPA of title insurance agents. That CPA audit requirement has been repealed. LB 155 is effective July 16, 2004.

LB 998 increases the amount of medical professional liability insurance that doctors have to maintain to participate in the Nebraska Hospital-Medical Liability Act Excess Liability Fund from \$200,000 to \$500,000 per occurrence and increases the aggregate liability amount from \$600,000 to \$1,000,000. For hospitals, this amount is increased from \$1,000,000 to \$3,000,000. Further, the legislation returns the duty to collect premium for the Excess Fund to the Department. LB 998 is effective January 1, 2005, with providers required to obtain the new coverage amounts after that date as their coverage is renewed.

The full text of the legislation is available at www.unicam.state.ne.us.

Nebraska is now accepting electronic licensing of nonresident producers through the National Insurance Producer Registry.

Prelicensing materials and examination materials for the personal lines license has been substituted to replace the assessment association line materials.

PRODUCER LICENSING DIVISION

Electronic Licensing of Nonresident Producers

Nebraska has joined the 30 other jurisdictions in accepting electronic licensing of nonresident producers through the National Insurance Producer Registry. The service is available to individuals only. Information is available on the web at www.licenseregistry.com

Assessment Association Limited Line License

Requirements for the assessment association limited lines producer license have changed in Nebraska. Prelicensing materials and examination materials for the personal lines license has been substituted to replace the assessment association line materials. Upon obtaining the license, individual producers may then chose to obtain a limited line assessment line or include the personal lines license as well.

CONSUMER AFFAIRS DIVISION

Coverage for Returning Service Members

A person called to active duty is entitled to reinstatement of any health insurance that was in effect on the day before such service commenced, and was terminated effective on a date during the period of such service.

According to the Servicemembers' Civil Relief Act, a person called to active duty is entitled to reinstatement of any health insurance that was in effect on the day before such service commenced, and was terminated effective on a date during the period of such service. A waiting period or exclusion cannot be imposed upon reinstatement if health coverage would have been provided to a person had the person not been absent for military service. The language is the same in the Uniform Services Employment and Reemployment Rights Act, which applies to employer provided health insurance. The requirement for immediate reinstatement of health insurance coverage, upon return from duty, also applies to individuals who were full-time students and covered as dependents under a health insurance policy prior to deployment.

EXAMINATION DIVISION

Pre-Need Exams Completed During First Quarter, 2004

Bressler-Munderloh Funeral Home
L & F, Inc. d/b/a Adams & Swanson Funeral Home, Inc.
Milacek Monument Co.
Miller-Godberson Mortuary
Ord Memorial Chapel, Inc.
Reynolds-Love Mortuary
Wood Mortuary, Inc. d/b/a Wood-Zabka Funeral Home

Financial Examinations Completed During First Quarter, 2004

Cornhusker Casualty Company
Great West Casualty Company
Oak River Insurance Company
Redwood Fire and Casualty Insurance Company
Safeway Property Insurance Company
Security Financial Life Insurance Company

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.

FRAUD DIVISION

Fourth Annual Fraud Conference Set For June 14

On June 14, 2004, the Department of Insurance, Fraud Prevention Division, will host the Fourth Annual Insurance Fraud Conference at Eugene T. Mahoney State Park located at Exit 426 on Interstate 80.

This year's conference, "Insurance Fraud: Putting the Pieces Together", will chronologically follow an actual insurance fraud investigation from claim submittal to medical evaluation, followed by surveillance, deposition, and finally prosecution. Presenters will provide attendees with their expertise on how they handled this case and then expand their disciplines to include case investigations in general.

The program will begin with Speaker Curt Bromm, State Senator, Speaker of the Nebraska Legislature, and former county attorney, presenting opening remarks to the attendees to get everyone started in the right frame of mind. The next presenter, Robert L. Wheaton, Midwest Prosecutor Coordinator for Travelers Property Casualty Corporation, will talk about how claims are received and processed within the insurance company. Dr. Charles Tayon, Creighton University, will discuss medical evaluations and how they fit into the claim process. David Cruse, Senior Investigative Consultant, and Scott Jackson, Field Operations Manager for Factual Photo, Inc. will offer surveillance techniques and fraud "red flags." Attorney Richard R. Endacott, from the firm of Knudsen, Berkheimer, Richardson & Endacott, will present information on the importance of a deposition. Packaging the investigative reports for prosecution will be handled by Investigator Chuck Starr with the Insurance Fraud Prevention Division of the Department of Insurance. The conference will conclude with Steve Schmidt, Deputy Lancaster County Attorney, discussing the special problems associated with prosecuting white-collar crime.

This full day of training will be conducted for the nominal fee of \$30.00, which includes continental breakfast, two breaks, buffet lunch and park entry pass. The target audience is insurance company special investigation units, claim and underwriting personnel. Representatives from all lines of insurance are encouraged to attend this conference where the very important subject of insurance fraud will be discussed.

For conference registration information contact Connie Drake, Fraud Prevention Division, 941 "O" Street, Suite 400, Lincoln, NE 68508-8336, by telephone at 402-471-8336, or by e mail at cdrake@doi.state.ne.us.



Department Calendar

- May 31: Department Closed – Memorial Day
- June 14: 4th Annual Fraud Seminar (registration required)
Eugene T. Mahoney State Park
- July 4: Department Closed - Independence Day



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